

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

ERNEST C. HARPER,

Petitioner,

V.

ROBERT HOUSTON, et al.,

Respondents.

CASE NO. 8:11CV324

MEMORANDUM AND ORDER

This matter is before the court on Petitioner Ernest Harper’s (“Petitioner”) “Motion for Reconsideration,” which the court liberally construes as a motion filed pursuant to [Federal Rule of Civil Procedure 60\(b\)\(6\)](#). (Filing No. [43](#).) The court will also address whether a certificate of appealability should issue in this matter.

I. Rule 60(b)(6) Motion

Rule 60(b)(6) “grants federal courts broad authority to relieve a party from a final judgment ‘upon such terms as are just,’ provided that the motion is made within a reasonable time and is not premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5).” [*Liljeberg v. Health Serv. Acquisition Corp.*, 486 U.S. 847, 863 \(1988\)](#). “Relief is available under Rule 60(b)(6) only where exceptional circumstances have denied the moving party a full and fair opportunity to litigate his claim and have prevented the moving party from receiving adequate redress.” [*Harley v. Zoesch*, 413 F.3d 866, 871 \(8th Cir. 2005\)](#).

Here, Petitioner merely re-argues the merits of his Petition. Even under the most liberal construction, he does not show that any exceptional circumstances prevented him from fully litigating his claims or receiving adequate redress. Therefore, Petitioner's motion is denied.

II. Certificate of Appealability

It appears from Petitioner's "Motion for Reconsideration" that he may also be seeking a certificate of appealability. A petitioner cannot appeal an adverse ruling on his

petition for writ of habeas corpus under § 2254 unless he is granted a certificate of appealability. [28 U.S.C. § 2253\(c\)\(1\)](#); [Fed. R. App. P. 22\(b\)\(1\)](#). A certificate of appealability cannot be granted unless the petitioner “has made a substantial showing of the denial of a constitutional right.” [28 U.S.C. § 2253\(c\)\(2\)](#). To make such a showing, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” [Slack v. Daniel, 529 U.S. 473, 484 \(2000\)](#).

In this case, Petitioner has failed to make a substantial showing of the denial of a constitutional right. The court is not persuaded that the issues raised in the Petition are debatable among reasonable jurists, that a court could resolve the issues differently, or that the issues deserve further proceedings. Accordingly, the court will not issue a certificate of appealability in this case.

IT IS THEREFORE ORDERED that:

1. Petitioner’s “Motion for Reconsideration” (Filing No. [43](#).) is denied; and
2. The court will not issue a certificate of appealability in this matter.

DATED this 12th day of February, 2013.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

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